IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 3RD OCTOBER 2007 / 11TH ASWINA 1929

Bail Appl..No. 5552 of 2007(G)

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CRIME NO.208/07 OF FEROKE POLICE STATION

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: PETITIONER/SECOND ACCUSED

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GIRISH KUMAR P.P.,
S/O.KUNHAN, AGED 27 YEARS, KUNNATH MOTTA,
MONGATH THAZHAM, FEROK AMSOM, NELLOOR DESOM,
KOZHIKODE DISTRICT.

BY ADV. SRI.K.M.FIROZ

RESPONDENTS: STATE

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THE STATE OF KERALA,
REPRESENTED BY THE SUB INSPECTOR OF POLICE,
FEROK POLICE STATION, CALICUT,
THROUGH THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY P.P. SRI.S.U. NAZAR.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 03/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**R. BASANT, J.**

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**B.A. No. 5552 OF 2007**

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**Dated this the 3rd day of October, 2007**

**ORDER**

Application for anticipatory bail. The petitioner is the 2nd accused in a crime registered at the Feroke Police Station. Altogether, there are two accused persons in the crime registered. The 1st accused was initially arrested under Sec.41 (1)(d) of the Cr.P.C. as he was unable to explain the possession of 14 cylinders of L.P.G. which he was allegedly carrying with him. He was arrested and interrogated. The arrest and interrogation revealed to the police the complicity of the petitioner. Those 14 gas cylinders were allegedly handed over to the 1st accused by the petitioner herein. Verification revealed that 8 out of the 14 cylinders were lost/thieved from a Gas Agency. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the allegations are totally false. As a matter of fact, the theft or illegal possession of the L.P.G. cylinders is by the Gas Agency themselves. They had entrusted the gas cylinders to the 1st accused. When the 1st accused was caught, now the blame is being shifted to the petitioner who happens to be a former employee under the very same Gas Agency. Because of some disputes between the Gas Agency and the petitioner, an attempt is now being made to falsely implicate the petitioner as an accused. The Gas Agency now apprehends that the petitioner may reveal to the police the alleged culpable involvement of the Gas Agency themselves. It is hence that the allegations are made in advance against the petitioner. It is prayed that directions under Sec.438 of the Cr.P.C. may be issued in favour of the petitioner.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the investigation so far reveals that 8 of the 14 cylinders which accused No.1 was found to possess were allegedly thieved and lost from the possession of the Gas Agency. There is absolutely nothing at the moment and in the available inputs to indicate that the Gas Agency and the 1st accused are acting in collusion to falsely and

vexatiously implicate the petitioner. An appropriate and fair investigation shall be conducted. Interrogation of the petitioner is absolutely essential for completion of such an investigation. The petitioner may not be permitted to arm himself with an order of anticipatory bail. Grant of such directions in favour of the petitioner would hamper the smooth course of the investigation. The petitioner may be directed to surrender before the Investigating Officer or the learned Magistrate and then seek regular bail, submits the learned Public Prosecutor.

4. Having considered all the relevant inputs, I find merit in the opposition by the learned Public Prosecutor. At the moment and with the available inputs, I find no reason to doubt or suspect the allegations raised against the petitioner. A proper investigation will have to be conducted and the truth ascertained. For the purpose of such investigation, interrogation of the petitioner appears to be absolutely essential. I am in agreement with the learned Public Prosecutor that there are no features in this case which would justify the invocation of the extraordinary equitable discretion under Sec.438 of the Cr.P.C. The petitioner, I am satisfied, must resort to the ordinary and normal course of appearing before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular

bail.

5. In the result, this bail application is dismissed; but with the observation that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and seeks bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

Sd/-

**(R. BASANT, JUDGE)**

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P.S. to Judge